

REMARKS

By the foregoing Amendment, Claim 20 has been amended. Favorable reconsideration of the application is respectfully requested.

Claims 20-25 were rejected under the judicially created doctrine of obviousness-type double patenting in view of claims 1-7 of U.S. Patent Nos. 6,665,888 and 6,736,580. A Terminal Disclaimer with respect to U.S. Patent Nos. 6,665,888 and 6,736,580 was filed with the Amendment of September 12, 2005. The Examiner indicated that the Terminal Disclaimer had not been approved because it did not disclaim co-pending application 11/080,025. However, co-pending application 11/080,025 had only been asserted against Claims 26-29, which were cancelled in the Amendment of September 12, 2005, and the Examiner has not again asserted co-pending application 11/080,025 against any of the claims pending in the application. It is therefore respectfully submitted that the Terminal Disclaimer submitted with the Amendment of September 12, 2005 should be accepted, and the rejection on the grounds of obviousness-type double patenting in view of claims 1-7 of U.S. Patent Nos. 6,665,888 and 6,736,580 should be withdrawn.

In the alternative, it is respectfully submitted that claims 1-7 of U.S. Patent Nos. 6,665,888 and 6,736,580 do not render Claims 20-25 unpatentable under the judicially created doctrine of obviousness-type double patenting. Claim 20 recites: "a plurality of non-contact sections defined in the drive socket, said plurality of non-contact sections being positioned about the center of the fastener and including non-contact surfaces, each non-contact section being located between adjacent rounded lobes and substantially

opposite one of the rounded lobes; and curved recesses defined in the drive socket, said curved recesses being located between the non-contact sections and the adjacent rounded lobes." It is respectfully submitted that claims 1-7 of U.S. Patent No. 6,665,888 do not recite a plurality of non-contact sections defined in a drive socket, with each non-contact section located between adjacent rounded lobes and substantially opposite one of the rounded lobes, and curved recesses defined in the drive socket and located between the non-contact sections and the adjacent rounded lobes. It is further respectfully submitted that claims 1-7 of U.S. Patent No. 6,736,580 do not recite a plurality of non-contact sections defined in a drive socket, with each non-contact section located between adjacent rounded lobes and substantially opposite one of the rounded lobes, and curved recesses defined in the drive socket and located between the non-contact sections and the adjacent rounded lobes. It is therefore respectfully submitted that the rejection of Claims 20-25 on the grounds of obviousness-type double patenting in view of claims 1-7 of U.S. Patent Nos. 6,665,888 and 6,736,580 should be withdrawn.

Claims 20-25 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Ruzicka in view of Colvin. Fig. 12 of Ruzicka was cited as disclosing a socket with a plurality of rounded inwardly directed lobes with contact surfaces opposite a plurality of non-contact surfaces all equally spaced about a center. Colvin was cited as disclosing a socket with curved recesses, and also the equivalence between a transition that is not curved and smooth, and a transition which is curved and smooth.

Claim 20 has been amended to be directed to "a drive socket of a threaded male fastener which is driven by a key wrench driver." Support for the amendment can be

found at page 1, lines 6-8. The Examiner indicated that the recitation in the preamble that the claimed invention is a drive socket for a fastener which is driven by a key driver was not given patentable weight on the grounds that the body of the claims do not "breath life and meaning to the preamble." The Examiner's attention is directed to MPEP 2111.02, concerning the effect of the preamble, and discussing *Kropa v. Robie*, 187 F. 2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The preamble considered in *Kropa v. Robie* recited "An abrasive article" which was deemed essential to point out the invention defined by claims to an article comprising abrasive grains and a hardened binder. In *Kropa v. Robie* the court stated "it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article." It is respectfully submitted that the preamble of Claim 20, reciting "a drive socket of a threaded male fastener which is driven by a key wrench driver" is analogous to that of *Kropa v. Robie*, in that the preamble serves to define the structure of the claimed invention. It is therefore respectfully submitted that the rejection of Claims 20-25 on the grounds of anticipation by Ruzicka should be withdrawn.

Claim 20 has now been amended to be in the form of an improvement-type claim. The Examiner's attention is directed to MPEP §608.01(m), which states "The form of claim required in 37 CFR 1.75(e) is particularly adapted for the description of improvement-type inventions. It is to be considered a combination claim. The preamble of this form of claim is considered to positively and clearly include all the elements or steps recited therein as a part of the claimed combination."

It is respectfully submitted that amended Claim 20 is presented in the form of such an improvement-type invention, and it is noted that 37 CFR §1.75(e) states that such an independent claim:

... should contain in the following order: (1) A preamble comprising a general description of all the elements or steps of the claimed combination which are conventional or known, (2) A phrase such as "wherein the improvement comprises," and (3) Those elements, steps, and/or relationships which constitute that portion of the claimed combination which the applicant considers as the new or improved portion.

It is respectfully submitted that Claim 20 meets the required form for such an improvement-type claim, and that the recitation of a "a drive socket of a threaded male fastener which is driven by a key wrench driver" in the preamble of the claim should be given patentable weight in distinguishing the invention claimed from Ruzicka and Colvin. Ruzicka discloses a socket wrenching tool for receiving hexagonal head fasteners, but fails to disclose a drive socket of a threaded male fastener which is driven by a key wrench driver, as is claimed. Colvin also discloses a wrench of either a socket or closed-end type at its driving end, and a driven end with a square driving tang, but fails to disclose a drive socket of a threaded male fastener which is driven by a key wrench driver, as is claimed. It is further respectfully submitted that Claims 20-25 are novel and inventive over Ruzicka and Colvin, and that the rejection of Claims 20-25 on the grounds of obviousness from Ruzicka in view of Colvin should be withdrawn.

In light of the foregoing amendments and remarks, it is respectfully submitted that the application should now be in condition for allowance, and an early favorable action in this regard is respectfully requested.

Respectfully submitted,

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